



THE EMELIE BUILDING • 334 NORTH SENATE AVENUE • INDIANAPOLIS, INDIANA 46204  
TELE: (317) 464-1100 • FAX: (317) 464-1111

RECORDATION NO. 28009-A FILED

June 30, 2009

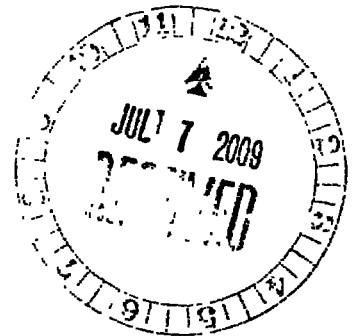
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

SURFACE TRANSPORTATION BOARD

Secretary, Surface Transportation Board  
395 E. Street, S.W.  
Washington, D.C. 20423-0001



Re: Documents for Recordation for LSM Locomotives, LLC

Dear Secretary:

I have enclosed two (2) originals of the documents described below to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

- 1) **Equipment Sale Agreement.** This document is a sales agreement which is a primary document, dated May 14, 2009, by and between 564109 B.C. Ltd d/b/a J&L Consulting, and MIPM, LLC.
- 2) **Security Agreement.** This document is a security agreement which is a secondary document, dated as of May 24, 2009, by and between LSM Locomotives, LLC, and MIPM, LLC, which is to be recorded along with the Equipment Sale Agreement.

The names and addresses of the parties to these documents are as follows:

**Seller**  
564109 B C Ltd  
5785 244b St  
Langley  
B.C. Canada V2Z 1c37

**Buyer/Lender**  
MIPM, LLC  
c/o Phillip Mervis  
4265 N. Pennsylvania  
Indianapolis, IN 46205

**Debtor**  
LSM Locomotives, LLC  
c/o Thomas G. Burroughs  
334 N. Senate Avenue  
Indianapolis, IN 46204

A description of the equipment covered by these documents is as follows:

The following locomotive cars and parts and scraps therefrom, as well as all proceeds generated from the sale, lease, transfer, or other conveyance of said collateral:

JLCX 630 RS18 CAT powered  
JLCX 617 RS18 CAT powered  
JLCX 604 RS18 CAT powered  
JLCX 762 SD40-2  
JLCX 754 SD40-2  
JLCX 5294 SD40-2  
JLCX 5401 SD50  
JLCX 1813 RS18 ALCO  
JLCX 1814 RS18 ALCO  
JLCX 1816 RS18 ALCO  
JLCX 1818 RS18 ALCO  
JLCX 1834 RS18 ALCO  
JLCX 1840 RS18 ALCO  
JLCX 1851 RS18 ALCO  
JLCX 1854 RS18 ALCO

A fee of \$82.00 payable to Secretary, Surface Transportation Board, is enclosed. Please return the original and any extra copies not needed by the Board for recordation to:

Michael J. Gabovitch  
KATZ & KORIN, PC  
334 N. Senate Avenue  
Indianapolis, Indiana 46204

A short summary of the documents to appear in the index follows:

- 1) **Equipment Sales Agreement.** This document is a sales agreement, dated May 14, 2009, by and between 564109 B C Ltd d/b/a J&L Consulting and MIPM, LLC. This agreement describes the terms and conditions of a sale and purchase of locomotive equipment identified as:

JLCX 630 RS18 CAT powered  
JLCX 617 RS18 CAT powered  
JLCX 604 RS18 CAT powered  
JLCX 762 SD40-2

JLCX 754 SD40-2  
JLCX 5294 SD40-2  
JLCX 5401 SD50  
JLCX 1813 RS18 ALCO  
JLCX 1814 RS18 ALCO  
JLCX 1816 RS18 ALCO  
JLCX 1818 RS18 ALCO  
JLCX 1834 RS18 ALCO  
JLCX 1840 RS18 ALCO  
JLCX 1851 RS18 ALCO  
JLCX 1854 RS18 ALCO

Mervis Industries, Inc. is purchasing the above-described equipment as an advance to LSM Locomotives, LLC.

- 2) **Security Agreement.** This document is a security agreement, dated as of May 24, 2009, by and between MIPM, LLC, and LSM Locomotives, LLC. This agreement describes the terms of a security interest on, among other things, the locomotive equipment described as:

JLCX 630 RS18 CAT powered  
JLCX 617 RS18 CAT powered  
JLCX 604 RS18 CAT powered  
JLCX 762 SD40-2  
JLCX 754 SD40-2  
JLCX 5294 SD40-2  
JLCX 5401 SD50  
JLCX 1813 RS18 ALCO  
JLCX 1814 RS18 ALCO  
JLCX 1816 RS18 ALCO  
JLCX 1818 RS18 ALCO  
JLCX 1834 RS18 ALCO  
JLCX 1840 RS18 ALCO  
JLCX 1851 RS18 ALCO  
JLCX 1854 RS18 ALCO

which was given to secure the purchase advance of the locomotives by MIPM, LLC for the benefit of LSM Locomotives, LLC.



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**SECURITY AGREEMENT**

SURFACE TRANSPORTATION BOARD

LSM LOCOMOTIVES, LLC, an Indiana limited liability company ("Borrower") hereby grants to MIPM, LLC, an Indiana limited liability company ("Secured Party"), a security interest in the following (collectively, the "Collateral"):

1. A first lien on all Borrower's accounts, accounts receivable, deposit accounts, general intangibles, payment intangibles, goods, instruments, investment property, cash, equipment, inventory, chattel paper and all other property, and rights of the Borrower.
2. A first purchase money lien on all locomotive cars and parts and scraps therefrom as evidenced by Exhibit A attached hereto and made part of this Agreement, as well as all proceeds generated from the sale, lease, transfer, or other conveyance of the collateral.
3. All proceeds and products from the foregoing.

This security interest is given to secure the advance of funds by Secured Party on behalf of Borrower (the "Advance") for payment of the purchase price under that certain Equipment Sale Agreement dated May 14, 2009, a copy of which is attached hereto as Exhibit "B".

Borrower confirms that it is granting the security interest herein for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**Terms, Conditions and Agreements**

1. Borrower warrants, represents, and covenants that:
  - a. its principal place of business is the notice addresses set forth below;
  - b. the security interest granted to Secured Party constitutes a valid lien;
  - c. Borrower is the lawful owner of the Collateral and has the right to create a security interest therein;
  - d. the Collateral will not be used or bought for personal, family or household, or farming purposes;
  - e. Borrower shall give Secured Party thirty (30) days prior written notice of any change in either its name, address, or its principal place of business and of any other change which could affect the priority of the security interest granted hereunder;
  - f. the Collateral and its additions and replacements will be used in the operation of Borrower's business;
  - g. Borrower shall, upon demand, furnish to Secured Party such further

information and shall execute and deliver to Secured Party such financing and continuation statements and other papers, and shall do all such acts as Secured Party may at any time or from time to time reasonably request in order to establish and maintain a perfected security interest in the Collateral;

- h. Borrower shall keep the Collateral in good repair, shall not knowingly permit the Collateral or any part thereof to be wasted or destroyed without promptly repairing or replacing the same at its expense;
- i. Borrower shall not use the Collateral in violation of any statute, ordinance, or other applicable law; and
- j. Borrower shall promptly pay, as they become due and payable, all taxes, assessments, and other charges validly assessed or imposed upon the Collateral, if any.

Borrower acknowledges that it has executed this instrument and has received a copy of the same.

2. Borrower grants to Secured Party the right and authority to file UCC financing statements in substantially the form and substance attached hereto as Exhibit C in the appropriate office(s) to perfect the security interests granted herein and to file such instruments and documents as may be necessary to perfect the security interests by filing with the U.S. Surface Transportation Board. The security interests hereby granted shall continue until full performance by Borrower of all conditions and obligations hereunder and in connection with the Advance. Borrower shall be entitled to possession of the Collateral until Secured Party takes possession of same pursuant to Secured Party's right to so do as set forth herein.

3. Borrower shall fully insure the Collateral, for the benefit of both Secured Party and Borrower, as their respective interests may appear, against loss or damage by fire, theft, and other casualties by comprehensive extended coverage insurance in kinds, amounts, and with companies reasonably agreeable to Secured Party, and shall identify secured party as an additional insured. Any such policy or policies shall contain a standard clause providing for cancellation only upon thirty (30) days written notice to Secured Party, as its interest may appear. Borrower shall, upon reasonable request by Secured Party, furnish a certificate, or copy, of such insurance to Secured Party.

4. If Borrower does not discharge taxes and other liens, assessments, encumbrances or charges at any time levied or placed on the Collateral or does not pay premiums for insurance on the Collateral before any of such charges become delinquent, Secured Party may, in its discretion, pay such charges or insurance. Secured Party may, at its discretion, and at least five (5) days after written notice thereof to Borrower, order and pay for the repair, maintenance, and preservation of the Collateral. Upon demand, Borrower shall reimburse Secured Party for any payment made or expense incurred (including attorneys' fees and legal expenses) by Secured Party pursuant to the

foregoing authorization, together with interest on the amount of such payment or expense at the rate of ten percent (10%) per annum, from the date of such payment.

5. Upon payment in full by Borrower of the indebtedness secured by this security interest, Secured Party shall execute any and all documents necessary to effectuate the termination of any financing statement filed by Secured Party in connection herewith.

6. Time, and each of the terms, conditions and agreements are of the essence of this Agreement. Any of the following shall constitute an event of default under this instrument; provided, however, that Secured Party shall give notice of any such event of default to Borrower and Borrower shall have the opportunity to cure the same within thirty (30) days from the date of such notice from Secured Party and no such event shall be deemed an event of default hereunder, unless Borrower shall have failed to cure same within the time period above provided:

- a. Any default by Borrower under the terms of the Advance;
- b. The non-payment and non-performance of any of the obligations of Borrower under any of the terms and provisions of this Agreement;
- c. The insolvency of Borrower or its failure or inability to pay debts as they mature in the ordinary course of business, an assignment by Borrower for the benefit of its creditors, the appointment of a receiver for Borrower or the Collateral, or the commencement of a voluntary or involuntary case under Title 11, United States Code respecting Borrower, provided, however, that with respect to an involuntary proceeding Borrower shall have 120 days within which to procure dismissal of the proceeding; or
- d. Any written warranty, representation, or statement made or furnished to Secured Party by, or on behalf of, Borrower proves to have been false in any material respect when made or furnished.

7. Upon any default, Secured Party, at its option and without notice or demand, may declare all obligations of Borrower secured hereby immediately to be due and payable, and shall have all the remedies of a secured party available under Indiana law, as well as all other applicable rights and remedies allowed by applicable law, regardless of whether such remedies are provided by the law of the jurisdiction where such rights are asserted and such remedies are sought. These remedies include, without limitation, the right to take possession of the Collateral, and for that purpose Secured Party may enter upon any premises on which the Collateral or any part of it may be situated and remove it. Secured Party may require Borrower make the Collateral available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expense of retaking, holding, preparing for

sale, selling and the like shall include the Secured Party's reasonable attorney's fees and legal expenses.

8. The Secured Party shall be entitled to reimbursement of attorneys' fees, costs and legal expenses incurred by Secured Party in pursuing its rights and remedies under the law and this Agreement. The obligations secured by this Security Agreement include such amounts for which Secured Party is entitled to reimbursement.

9. No transfer, renewal, extension or assignment of this instrument, the obligations secured or any interest hereunder, and no loss, damage or destruction of the Collateral, and no taking of security in other collateral, shall release Borrower from this instrument or the obligations secured hereunder.

10. No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns, and all obligations of Borrower shall bind its successors and assigns.

11. Any notice required to be given by either party to the other under the provisions of this instrument or under applicable law shall be sufficient if personally delivered or sent by certified or registered mail, postage prepaid, and addressed to Borrowers or Secured Party at the following addresses:

Borrower: LSM LOCOMOTIVES, LLC  
c/o Thomas G. Burroughs  
334 N. Senate Avenue  
Indianapolis, IN 46204

Secured Party: MIPM, LLC  
4265 N. Pennsylvania  
Indianapolis, IN 46205

or to such new address as shall be supplied in writing by either party to the other. Notice shall be effective (i) on the date personally served, and (ii) two (2) days after deposited in the United States mail as provided above.

12. This Agreement shall be interpreted and construed in accordance with the internal laws of the State of Indiana without giving effect to its principles of conflicts of law. Any legal action or other proceeding commenced based upon this Agreement shall be brought in or transferred to an Indiana State Court sitting in Marion County, Indiana, or Federal Court located in Marion County, Indiana. The parties to Security Agreement hereby consent and irrevocably submit to the jurisdiction of such courts and irrevocably waive the defense of an inconvenient forum to the maintenance of such action or proceeding.



13. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this Agreement. The remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if the invalid provision had never been included herein.

14. In the event a dispute shall arise with regard to compliance by a party with the terms and provisions of this Agreement and such dispute should result in litigation or alternative dispute resolution, Secured Party shall be entitled to reasonable attorney fees and costs, which costs shall include, without limitation, court costs and those costs related to litigation and/or the alternative dispute resolution process.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 24<sup>th</sup> day of May, 2009.

"Borrower"

"Secured Party"

LSM LOCOMOTIVES, LLC

By:

Phillip D. Mervis  
Phillip D. Mervis, Manager

MIPM, LLC

By:

Phillip D. Mervis  
Phillip D. Mervis, Authorized Member

STATE OF Indiana

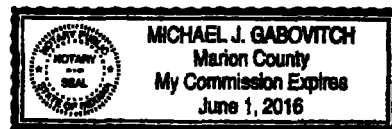
COUNTY OF Marion

)  
) SS  
)

On this 24<sup>th</sup> day of May, 2009, before me, the undersigned Notary Public in and for the State of Indiana, personally appeared Phillip D. Mervis, Manager of LSM Locomotives, LLC, and known to me to be a member or designated agent of the limited liability company that executed the Security Agreement and acknowledged the Security Agreement to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this Security Agreement and in fact executed the Security Agreement on behalf of the limited liability company.

Michael J. Gabovitch

Michael J. Gabovitch, Notary Public  
(Printed)



County of Residence: Marion

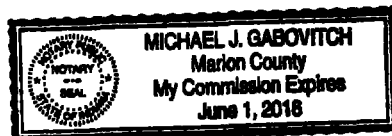
My commission expires June 1, 2016

STATE OF Indiana )  
 ) SS  
COUNTY OF Marion )

On this 24<sup>th</sup> day of May, 2009, before me, the undersigned Notary Public in and for the State of Indiana, personally appeared Phillip D. Mervis, Authorized Member of MIPM, LLC, and known to me to be an officer or designated agent of the limited liability company that executed the Security Agreement and acknowledged the Security Agreement to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this Security Agreement and in fact executed the Security Agreement on behalf of the limited liability company.

Michael J. Gabovitch

Michael J. Gabovitch, Notary Public  
(Printed)



County of Residence: Marion

My commission expires June 1, 2016

## **EXHIBIT A**

The locomotive equipment and cars, and any parts, scraps, and proceeds generated from the sale, lease, scrap, transfer, or conveyance, more specifically identified as:

JLCX 630 RS18 CAT powered  
JLCX 617 RS18 CAT powered  
JLCX 604 RS18 CAT powered  
JLCX 762 SD40-2  
JLCX 754 SD40-2  
JLCX 5294 SD40-2  
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JLCX 1818 RS18 ALCO  
JLCX 1834 RS18 ALCO  
JLCX 1840 RS18 ALCO  
JLCX 1851 RS18 ALCO  
JLCX 1854 RS18 ALCO

**EXHIBIT B**

**EQUIPMENT SALE AGREEMENT**